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June 7, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
Room TW-A325, The Portals
445 Twelfth Street, S.W.
Washington, D. C. 20554

Re: Ex Parte Presentation in re
State of Tennessee et al.
CC Docket No. 96-45
CC Docket No. 97-21

Dear Ms. Salas:

This is submitted in connection with the above-referenced proceeding on review of a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company. In particular, we wish to underscore the importance of a policy issue raised in that proceeding.

By way of background, United Utilities, Inc. ("United") is a local exchange telephone carrier certificated by the Alaska Public Utilities Commission. United provides high speed Internet access services and has been an active participant in requests for e-rate proposals issued by Alaskan school districts. Indeed, United has been compelled to register complaints with SLD concerning certain e-rate awards, which complaints are currently pending.

A central point raised in the Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") petition is that the State of Tennessee Department of Education ("Department") manipulated an RFP process so as to deliberately select the highest cost bid, rather than the lowest cost bid. ISIS 2000 further contends that this was done despite the fact that Commission policy requires that price be "the primary factor" considered in awarding an e-rate contract. See Report and Order in CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, 9029-30, para. 481 (1997). According to the ISIS 2000 petition,

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> [T]he Department's cost bid criteria and subsequent valuation focused only on obtaining the highest possible pre-discount price, wholly apart from the evaluation of non-cost factors. It expressly sought to leverage the maximum amount of USF funding that could be obtained for a fixed dollar expenditure by the Department.

Id. at 6.

United is not in a position to comment on the underlying factual record/dispute between ISIS 2000 and the Department. What United can say, however, is that ISIS 2000's experience is not unique. In Alaska, school districts have ignored the Commission's "price is the primary factor" criterion. Indeed, this has been accompanied by candid assertions that price does not matter since "[c]osts, especially costs that are subsidized by 90 percent, should not be the sole or even primary factor." See Attachment.

Unfortunately, attitudes like this can be traced to the vagary of the Commission's funding criteria. It is simply not enough to say, as the policy does, that price is to be "the primary factor": After all, this can be read (and in fact is read by Alaskan school districts) to mean no more than that, out of a half dozen or more criteria, price must be weighted slightly more than any other factor considered individually. But if a district were utilizing a bid evaluation process that included, say, ten (10) criteria worth in the aggregate 100 points, price could end up being weighted at 11 points, while the others taken together equaled 89. Price in this sense could hardly be considered "primary", yet Commission policy permits just this sort of result.

Naturally, given the ambiguity of Commission policy, effective policing of RFP awards is nearly impossible. This problem is exacerbated by the fact that in United's experience school districts refuse to disclose the terms of winning bids, thereby depriving interested parties of information important to monitoring the integrity of the e-rate program. This lack of data undermines the Commission's reliance on state and local procurement processes, and SLD's own review process.

Accordingly, United would urge the Commission to utilize this proceeding to reinforce the principle that price is "the primary factor". In addition, the Commission could consider revising Rule 54.511 to prescribe that when a school awards a contract to a provider that has not submitted the lowest price, that school should not be eligible for funds above the lowest bid submitted by other responsible bidders. Rather, the school should pay 100 percent of the cost over the lowest price bid submitted; e-rate funds could be used only to subsidize the price up to the amount of that lowest responsible bid. Moreover, the Commission should require disclosure of the terms and conditions of winning bids.

* * *

The E-rate program is too important to become the victim of gold-plating and other abusive practices funded at the expense of ratepayers. Such a result will generate further controversy, if not disrespect, for the program and the Commission's administration thereof, and, ultimately, undermine the political support so essential for the program's success.

An original and three copies of this letter are supplied for inclusion in the referenced dockets.

Sincerely,

William K. Keane
Brian D. Robinson
Counsel for United Utilities, Inc.

cc: Ray Kelly
Richard Tardiff

LOWER YUKON SCHOOL DISTRICT

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RAY J. GRIFFITH, Ed.D.
Superintendent

November 28, 1998

Steve Hamlen, President
United Utilities, Inc.
5450 A Street
Anchorage, AK 99518-1278

RE: United's Comments on Pre-RFP for Internet Services

Dear Mr. Hamlen:

Pursuant to your letter to me dated November 19, 1998, and your letter to Brett Hill dated November 24, 1998, a number of changes have been made to the RFP. Brett Hill, via separate letter, will be advising you of the changes being made pursuant to your letter to him, which deals more with the technical nature of the RFP. This letter is to address some of the policy issues that you raised.

1. The RFP requirement that the provider commit to assisting and sharing school bandwidth with "compliant users," is certainly consistent with the mission and goals of the Lower Yukon School District. However, to ensure that USF rules are strictly adhered to, the District is limiting the sharing of the school bandwidth to health clinics and libraries.
2. The methodology for evaluating bid proposals is consistent with District policy. Board Policy 3311 requires competitive bidding "when required by law and whenever it appears to be in the best interest of the district to do so." The Administrative Regulation which you quote in your letter requires the award to the lowest responsible bidder only when "competitive bids are required." Regarding the District's RFP for telecommunications and Internet services, it has been determined that a competitive bidding process is appropriate, though not one based solely on cost. It is certainly in the best interest of the District to consider the other factors set forth in the FRP. Costs, especially costs that are subsidized by 90 percent, should not be the sole or even primary factor.

3. The issue of space and power is a legitimate one. The District has decided to state in the RFP that the District will receive a 3 percent credit on the cost per site if satellite dishes and other similar equipment is placed on District property and/or is tied into District power.
4. There will be no change in the RFP regarding the makeup of the bid evaluation committee.
5. At present, there is no "regionally-owned" preference in Board policy. On a broad scale, the legality and wisdom of such a policy is a matter of substantial public interest. More specifically, defining a "regionally-owned" bidder/proposer, especially when any such bidder/proposer might not even maintain a primary place of business in the region, needs to be carefully considered.

Thank you for your time and consideration. I wish United luck in the RFP process.

Sincerely,

Lower Yukon School District

Ray J. Griffith, Ed.D., Superintendent